

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

WESTERN ORGANIZATION OF)
RESOURCE COUNCILS, *et al.*,)

Plaintiffs,)

v.)

U.S. BUREAU OF LAND)
MANAGEMENT,)

Defendant, and)

STATE OF WYOMING,)

Intervenor Defendant.)

Case No. 4:20-cv-00076-BMM-JTJ

**SETTLEMENT AGREEMENT
AND RELEASE**

STIPULATED SETTLEMENT AGREEMENT

This Agreement is entered into between Plaintiffs Western Organization of Resource Councils (WORC), Montana Environmental Information Center, Powder River Basin Resource Council, Northern Plains Resource Council, Center for Biological Diversity, and WildEarth Guardians (collectively “Plaintiffs”¹) and Federal Defendant the United States Bureau of Land Management (BLM).

WHEREAS, on August 27, 2020 Plaintiffs brought the instant action (*WORC et al. v. BLM*, No. 4:20-cv-76-BMM) in the United States District Court for the District of Montana against Federal Defendant, alleging various claims under the National Environmental Policy Act and the Administrative Procedure Act challenging the final environmental impact statements (FEISs) prepared by Federal Defendant in support of resource management plan (RMP) amendments for the Buffalo field office in Wyoming and the Miles City field office in Montana;

WHEREAS, the Court granted Plaintiffs’ motion for summary judgment and denied Federal Defendant’s motions for summary judgment and voluntary remand in its August 3, 2022 Order (ECF No. 71);

WHEREAS, the Court entered judgment on August 4, 2022 (ECF No. 72);

¹ The Sierra Club also brought claims in this matter. It is not a party to this settlement agreement and did not seek recovery for fees associated with this litigation.

WHEREAS, Federal Defendants and Intervenor-Defendant the State of Wyoming voluntarily dismissed their appeals of the Court's Order (ECF No. 79);

WHEREAS, on December 23, 2022, Plaintiffs filed an application with the District Court seeking attorneys' fees, costs, and expenses pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) (ECF Nos. 80 and 81); and

WHEREAS, Plaintiffs and Federal Defendant agree that it is in the interest of the parties and judicial economy to settle all of Plaintiffs' claims for attorneys' fees, costs, and expenses in the above-referenced lawsuit.

NOW, THEREFORE, for the sole purpose of resolving these matters without further litigation, the parties hereby stipulate and agree as follows:

1. Federal Defendant agrees to pay a total of \$127,966.80 to Plaintiffs in full satisfaction of any and all claims that have been or could be brought for attorneys' fees, costs, and expenses related to the above-referenced lawsuit against any party of the United States government.
2. Federal Defendant will make the payment identified in Paragraph 1 by electronic funds transfer to the client trust account(s) of Plaintiffs' attorney(s), Western Environmental Law Center (the "Payee"), which will accept payment on behalf of Plaintiffs. The Payee agrees to provide notice via electronic mail of receipt of the payment to Federal Defendant's counsel within 7 days of receipt of payment.

3. In acknowledgement and in exchange for payment pursuant to Paragraphs 1 and 2, Plaintiffs and their counsel, assigns, executors, and administrators agree that receipt of such payment shall constitute full and complete satisfaction of all their claims under the EAJA and any other authority for attorneys' fees, costs, and expenses incurred by Plaintiffs in the above-referenced lawsuit. So long as the Payee receives payment from Federal Defendant, Plaintiffs and their counsel, assigns, executors, and administrators further agree to forever release, abandon, waive, and discharge the United States and Federal Defendant from any and all claims, demands, causes of action or suits at law or equity to recover attorneys' fees, costs, and expenses in any way incurred in the above-referenced lawsuit.
4. The Payee acknowledges that it is receiving the payment on behalf of Plaintiffs WORC, Montana Environmental Information Center, Powder River Basin Resource Council, Northern Plains Resource Council, Center for Biological Diversity, and WildEarth Guardians, and agrees to distribute the settlement proceeds as agreed among the Plaintiffs. Plaintiffs and Plaintiffs' counsel agree to hold the United States harmless in any dispute between Plaintiffs and Plaintiffs' counsel arising from the authorized transfer of the agreed-upon settlement amount.

5. Plaintiffs also acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the fee award the delinquent debts of Plaintiffs owed to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010). Plaintiffs therefore commit to provide Federal Defendant with Plaintiffs' tax identification numbers within 7 days of execution of this agreement.
6. Plaintiffs will provide Federal Defendant with the following information necessary for Federal Defendant to process the payment identified in Paragraphs 1 and 2 within 7 days of the execution of this Agreement: the Payee's name and address; the name, address, and phone number of the Payee's bank; the Payee's account name, account type, and account number; the bank routing transit number ("RTN"); the Payee's tax identification number; and a name and phone number for a contact person regarding any payment-related questions.
7. Federal Defendant enters into this Settlement Agreement solely to avoid further litigation regarding the issues resolved by this Agreement. This Settlement Agreement represents a compromise of disputes and does not constitute, and shall not be construed as, an admission of liability or error by Federal Defendant with respect to any matter associated with Plaintiffs' claims or arguments. The parties agree that the Settlement Agreement has no

precedential value and they shall not cite the Agreement or settlement embodied herein as evidence of any liability in this case or in any other litigation, except as necessary to enforce the terms of this Settlement Agreement. Federal Defendant does not waive any defenses it may have concerning the claims settled under this Settlement Agreement.

8. The parties recognize and acknowledge that the payment obligations of Federal Defendant can be paid only from appropriated funds legally available for such purpose. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that Federal Defendant is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable provisions of law.
9. This Settlement Agreement represents the entirety of the commitments between Plaintiffs and Federal Defendant with regard to settlement of Plaintiffs' claims for attorneys' fees, costs, and expenses. The terms of this Settlement Agreement shall become effective when it has been signed by both parties. No modification of this Settlement Agreement shall be valid unless expressly consented to in writing by all the parties.
10. The provisions of this Settlement Agreement shall apply to and be binding upon each of the settling parties including, but not limited to, their officers,

directors, servants, employees, successors, assigns, officials, administrators, contractors, attorneys, and past and present agents.

11. The undersigned warrant that they have full authority to enter into this Settlement Agreement and by their signatures bind to the terms of this Agreement the party or parties on whose behalf they have signed.

IT IS HEREBY AGREED.

Date: April 18, 2023

/s/ Melissa A. Hornbein

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On behalf of Plaintiffs

Date: April 14, 2023

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